identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

#5

[redacted]

Date: DEC 0 2 2011 Office: CHARLOTTE, NC [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Charlotte, North Carolina. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Albania who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The field office director found that the applicant failed to provide any evidence of extreme hardship and denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 28, 2009.

On appeal, counsel contends that the field office director erred in finding that the applicant failed to submit any evidence of hardship. Counsel contends the applicant's wife and step-daughter provided statements to show extreme hardship and provided financial documents.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on November 29, 2005; a statement from the applicant; letters from [redacted] letters from [redacted] daughter; a copy of [redacted] first husband's death certificate; copies of bills, tax returns, and other financial documents; letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that he entered the United States on December 29, 1999, using a B-2 visa under an assumed name. [redacted] undated (stating that he "shouldn't have gotten an illegal passport to come to the U.S. but [he] had tried to get a visa a long time ago but it was denied"). Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique

circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant's wife, [redacted] states that she met the applicant when she was working at his sister and brother in law's restaurant. [redacted]tates that her children are her life and that she is the only parent they have because their father died in July of 1994. According to [redacted] she has to take care of her youngest son a lot because he has trouble with his lungs, "a thinning of the lining of his lungs." She contends he has had to go to the hospital, has had surgery twice, and that his lung has collapsed. [redacted] states that her current husband, the applicant, is great with her daughter who lives with them and that he also gets along well with her other children. She states that she has been laid off from her job and that she and her daughter have been relying on her husband to get by. She states that if her husband departed the United States, she and her daughter would lose their home and have no place to go. She contends her husband now works six days per week and that she is collecting unemployment benefits. In addition, [redacted] contends she cannot move to Albania to be with her husband because she does not know anyone in Albania, does not speak Albanian, and would be unable to find a job. She contends that learning Albanian at fifty-three years old seems like an insurmountable challenge. Furthermore, she states that her mother and grandfather are getting older and that she does not want to leave them. According to [redacted] her mother has trouble with her lungs and her grandfather has a pace maker. She also contends her children live in the United States and that she cannot leave them. *Letters from* [redacted] dated March 17, 2009, and undated.

Letters from [redacted] daughter, [redacted] states that she lost her father to cancer when she was seven years old. She states that ever since her mother married the applicant, she considers him a father figure and her mother has become a happier person. According to [redacted] before her mother met the applicant, things were very hard and she had to get a job as soon as she graduated from high school in order to help pay the bills. She states that she now has a chance of going to college, but that her mother recently lost her job. [redacted] states she has waited a long time to have a family and that she does not know what she and her mother would do without the applicant. *Letters from* [redacted] both undated.

After a careful review of the record, the AAO finds that if [redacted] had to move to Albania to be with her husband, she would experience extreme hardship. The record shows that [redacted] was born in the

United States and is currently fifty-five years old. According to the applicant's adjustment of status application, [redacted] has four U.S. citizen children ranging in age from twenty-three years old to thirty-four years old. In addition, the record contains a copy of [redacted] first husband's death certificate which indicates that he died in July of 1994 of pancreatic and esophageal cancer three to four months after his diagnosis. The death certificate indicates that [redacted] first husband was employed as a Communications Technician and according to [redacted] daughter, [redacted] things were very hard on the family financially, causing her to not to go to college and get a job to help pay the bills. Furthermore, according to [redacted] she does not speak Albanian, fears she will be unable to find employment in Albania, and cannot leave her family, all of whom live in the United States. Considering these unique circumstances cumulatively, the AAO finds that the hardship [redacted] would experience if she had to move to Albania is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO recognizes [redacted] first husband passed away from cancer and is sympathetic to her circumstances, aside from stating that her children's father died and that she loves the applicant very much, there is no evidence that their situation is extreme, unique, or atypical compared to others in similar circumstances. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Regarding financial hardship, [redacted] contends she was laid off from her job and the record contains a printout of her unemployment compensation benefits. However, the evidence of unemployment compensation is for the period from August 2008 until November 2008 and the record shows she was hired for a full-time position with [redacted] beginning on November 19, 2008. *Letter from* [redacted] dated December 11, 2008 (stating [redacted] earns $1600 per month). There is no evidence she is currently receiving unemployment compensation benefits. In any event, even if [redacted] was laid off and is receiving unemployment compensation, the AAO notes that [redacted] worked at [redacted] which the applicant's family owns, from November 2005 until at least September 2007. *Biographic Information forms (Form G-325A)*, dated September 24, 2007, and January 21, 2006; *Affidavit of Support Under Section 213A of the Act (Form I-864)*, dated January 23, 2006 (stating [redacted] works at [redacted] twenty-two hours per week); *see also Letter from* [redacted] undated (stating that the applicant's family owns [redacted] and that the applicant "holds a significant role in operating and maintaining a successful business"); *Letter from* [redacted] dated January 4, 2009 (letter from the applicant's sister stating that [redacted] was working for her at the restaurant when she met the applicant). Neither the applicant nor [redacted] address whether she can work at the family's restaurant again. Moreover, although [redacted] has four grown children, the record contains only letters from her youngest child, [redacted]. [redacted] does not address whether any of her other children, who are currently thirty, thirty-one, and thirty-four years old, can help financially support her in any way. Furthermore, the applicant states that in Albania, he worked as a tour bus driver and earned approximately $2,500 per month. [redacted] *Statement, supra*; *Biographic Information form (Form G-325A)*, dated September 24, 2007 (stating the applicant worked as a driver in Albania for five years, from March 2000 until March 2005). The applicant and [redacted]

have not addressed whether the applicant can help financially support his wife if he returns to Albania and she remains in the United States. To the extent [redacted] states her husband helps her with her son's purported medical condition, there is no evidence in the record, such as a letter from a health care professional, corroborating any of [redacted] claims that her son, her mother, and her grandfather have medical problems.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.